

STATE OF MICHIGAN  
COURT OF APPEALS

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KATHERINE JOYCE NOLFF,

Plaintiff-Appellant,

v

RUSSELL ALLEN NOLFF,

Defendant-Appellee.

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UNPUBLISHED

May 24, 2005

No. 252224

Kent Circuit Court

LC No. 02-011098-DO

Before: Murphy, P.J., and White and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's award of spousal support. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant were married in 1975, and are the parents of two adult children. Plaintiff filed a complaint for divorce in 2002, seeking an equitable division of property and spousal support. Following a nonjury trial, the trial court divided the parties' property approximately equally, and awarded plaintiff spousal support in the amount of \$80 per week for two years, modifiable based on changed circumstances.

An award of spousal support is in the trial court's discretion. *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003). The principal objective of spousal support is to balance the incomes and needs of the parties in a way that will not impoverish either party. Spousal support is to be based on what is just and reasonable under the circumstances of the case. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). Among the factors that should be considered are: (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the abilities of the parties to work; (4) the source and amount of property awarded to the parties; (5) the parties' ages; (6) the abilities of the parties to pay spousal support; (7) the present situation of the parties; (8) the needs of the parties; (9) the parties' health; (10) the prior standard of living of the parties and whether either is responsible for the support of others; (11) contributions of the parties to the joint estate; (12) a party's fault in causing the divorce; (13) the effect of cohabitation on a party's financial status; and (14) general principles of equity. *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).

On appeal, we review the trial court's findings of fact for clear error. *Moore, supra*. A finding is clearly erroneous if, after viewing all the evidence, we are left with a firm and definite conviction that a mistake was made. *Id.* at 654-655. If the trial court's findings are not clearly

erroneous, we must then determine whether the dispositional ruling was fair and equitable in light of all the facts. *Id.* at 655. The trial court's decision regarding spousal support must be affirmed unless we are firmly convinced that it was inequitable. *Gates, supra* at 433.

Plaintiff argues that the trial court erred by awarding her only temporary spousal support in the amount of \$80 per week for two years. Although a close call, given the duration of the marriage and income and hours worked by the parties, we are unable to conclude that the award should be reversed.

The evidence showed that while the parties' marriage was of twenty-seven years' duration, other factors supported a limited award of alimony. Plaintiff's engaging in an adulterous affair with her daughter's boyfriend was relevant to the issue of fault. While a significant period of time had elapsed since the affair, the resultant strain contributed to the breakdown of the marriage. While the trial court might have chosen to penalize plaintiff in the distribution of assets, the court opted for a roughly congruent division.

The trial court's conclusion that plaintiff was entitled to spousal support in the amount of \$80 per week for two years was made after considering the relevant factors, *Olson, supra*, and was based on a finding that plaintiff was able to work and to support herself in a reasonable manner on her income. That finding was not clearly erroneous. *Moore, supra* at 654-655. Plaintiff, who was forty-nine years old at the time of trial, worked full-time as a nurse's aide, and received insurance benefits as part of her employment. No evidence indicated that plaintiff was in danger of losing her employment, or that she suffered from significant health problems that restricted her ability to work. Plaintiff was able to pay her bills in a timely manner, and cover her expenses. At the time of trial, plaintiff's income was substantially increased from prior years, largely due to her working an average of approximately sixty-nine hours per week.<sup>1</sup> Plaintiff argues that she should not be required to work such hours to support herself, given the length of the marriage and defendant's income of \$68,000 in 2002, and an average of approximately \$59,000 since 1994. We conclude, however, that under the circumstances, the income disparity is not so great as to render the court's decision inequitable, and, thus, the award must be affirmed. *Gates, supra*.

Affirmed.

/s/ William B. Murphy  
/s/ Helene N. White

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<sup>1</sup> Plaintiff's gross pay as of August 13, 2003, was \$25,169.